

### **Remarks/Arguments**

As of the Advisory Action mailed on June 5, 2006 claims 7, 9, 10 and 12-20 are pending in the application and stand rejected. Claims 1-6, 8, 11 and 21-49 have been canceled. Reexamination and reconsideration are respectfully requested in light of the amendments and remarks/arguments herein.

### **Amendments to the Claims**

Claim 7 has been amended to recite that the “shell component comprises a polymer material and a structuring agent dispersed into said polymer material.” Support for this amendment may be found, for example, in paragraph 0027 of the published application which recites that “the structuring agent can be incorporated into the polymer matrix such as being uniformly or non-uniformly dispersed in the polymer matrix.” In addition, the claim has been amended to recite that the structuring agent is present at a level of about 1 to 50 % by weight of the shell component. Support for this amendment may be found at paragraph 0030 of the published application. Furthermore, claim 7 has been amended to recite “oxygen and water permeability.” Support for this amendment may be found in paragraph 0026 of the published application which recites in part that “[a]ddition of the structuring agent has been found to decrease the oxygen and/or water permeability of the polymer.” No new matter has been entered.

Claim 18 has been amended to recite that the “structuring agent is uniformly dispersed in said polymer material.” Support for this amendment may be found in paragraph 0027 of the published application as noted above. No new matter has been added by this amendment.

Claim 19 has been amended to recite that “said polymer material forms an interior shell around said core component and said structuring agent forms an exterior shell around said interior shell such that a gradient exists extending radially into said microcapsule from said structuring agent to a mixture of said structuring agent and polymer material to said polymer material.” Support can be found at paragraph 0027 of the published application which recites in part: “the structuring agent can be a distinctly separate layer, or a layer that is at least partially intertwined with the polymer material such that a gradient exists extending radially into the microcapsule, generally from structuring agent to mixture of structuring agent and polymer material to polymer material.” No new matter has been entered by this amendment.

Rejections Under 35 USC §102/103

Claims 7, 9, 10, and 12-20 have been rejected under 35 USC 102/103 as either being anticipated by or unpatentable over Munteanu et al. (U.S. Patent No. 4,428,869).

As an initial note, claim 7 has been amended to recite that said shell component comprises a polymer material and a structuring agent dispersed into said polymer material. As recognized by the Examiner “Munteanu does not disclose the presence of the structuring agent in the continuous phase or that the resulting microcapsule shell comprises a dispersion of the structuring agent in the polymeric material.” That being the case, it is believed that the outstanding rejection under 35 USC 102 has been rendered moot.

In addition, as can be observed, claim 7 has been amended to recite that the structuring agent is present at a level of about 1 to 50 % by weight of the shell component, and that the structuring agent decreased oxygen and water permeability. It is not believed that such combination of features are suggested by the U.S. ‘869 reference.

In that context, Applicants appreciate the Examiner statement regarding the U.S. '869 reference which was as follows:

“[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to have included the structuring agent in the polymeric continuous phase during the formation of the microcapsules, in order to include an agent that, as disclosed above, is capable of decreasing the oxygen and/or water permeability of the polymeric material, and assists in preservation of the core component.”

A few comments. First, the Examiner's reference to “include an agent...as disclosed above” appears to be reference to the U.S. '869's teaching that one should employ the antioxidant butylated hydroxytoluene (BHT) into the shell component of the microcapsule.

BHT, while being an anti-oxidant, and although identified as an additive in the shell component by the prior art, is indeed only an anti-oxidant and is identified as only present in an amount of 0.1 parts to 99.9 parts of polymer (see Example J appearing at columns 21-22 of the U.S. '869 reference). As the Examiner may appreciate, an anti-oxidant, while capable of controlling the chemistry of an oxidation reaction, is not a “structuring agent” that “decreases oxygen and water permeability.” But perhaps more basically, the U.S. '869 reference teaches only to use minor amounts of such additive, which stands in contrast to the concentration ranges recited in claim 7.

In addition, it is worth emphasizing that the U.S. '869 reference, when describing the use of a suspending agent [Klucel®] (which the Examiner previously interpreted as a “structuring agent” at the bottom of page 2 of the Office Action of March 17, 2006) is not described as being dispersed in the polymeric material, as is plainly evident from FIG. 3 of the subject reference. As emphasized, the suspending agent is utilized to prepare a suspension which is then mixed with the microcapsules and then would only serve to coat such capsules. That being the case, it

is believed that it is reasonable to conclude that the U.S. '869 reference: 1. teaches against dispersion of a structuring agent to decrease oxygen and water permeability in the polymer material utilized for encapsulation; 2. teaches that the polymer to be employed for encapsulation may at best contain additives such as an antioxidant at levels of about 0.1 parts to 99.9 parts polymer; and 3. that it is best to coat the polymer with the suspending agent in order to provide an "extended release" fragrance.

In light of the above, Applicants respectfully submit that claims 7, 9, 10 and 12- 20 are not taught or suggested by the cited references. In consideration of the foregoing Applicants respectfully requests that the rejections of claims 7, 9, 10 and 12-20 are withdrawn upon reconsideration.

Having overcome all of the outstanding rejections, it is respectfully submitted that the application is now in condition for allowance. Early and favorable action is respectfully solicited.

In the event that there are any fee deficiencies, or additional fees are payable, please charge, or credit any overpayment to, our Deposit Account No. 50-2121.

Respectfully submitted,

/Steven J. Grossman/

---

Steven J. Grossman  
Attorney for Applicant(s)  
Reg. No. 35,001  
Grossman, Tucker, Perreault & Pflieger, PLLC  
55 South Commercial Street  
Manchester, New Hampshire 03101  
Tele: 603.668.6560